8-3100-8150-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF VETERANS AFFAIRS

Makolle R. Williams,

Petitioner,

RECOMMENDED ORDER
V. ON MOTION TO DISMISS

Metropolitan Waste Control Commission,

Respondent.

The above-entit led matter is before the undersigned Administrative Law Judge pursuant to a Notice of Petition and Order for Prehearing Conference filed on July 23, 1993. Jesse Gant , III, Attorney at Law, Grain Exchange Building, 400 South 4th Street, Suite 915, Minneapolis, Minnesota 55415, appeared on behalf of the Petitioner. David J. Goldstein, Attorney at Law, Faegre & Benson, 2200 Norwest Center, 90 South Seventh Street, Minneapolis, Minnesota 55402-3901, appeared on behalf of Respondent.

On August 18, 1993, Respondent filed a Motion to Dismiss the Petition filed with the Minnesota Department of Veterans Affairs (Department). Petitioner filed objections to the Motion on August 26, 1993 and supplemental material on August 30, 1993. Respondent replied to the Petitioner's filings on August 30, 1993. For purposes of this Motion, the record dosed on September 22, 1993 when oral arguments were heard.

NOW, THEREFORE, Based upon all of the fi 1 es , records, and proceedings herein,

IT IS HEREBY RECOMMENDED: That the Commissioner of Veterans Affairs DISMISS Petitioner' s Petition on the ground that he is estopped from asserting that he was removed from his employment with Respondent.

IT IS HEREBY ORDERED: That this Order and the underlying Motion be certififed tco the Commissioner of Veterans Affairs pursuant to Minn. Rules, pt. 1400.76006. and D. (1991).

Dated this 23 day of September, 1993.

JON L. LUNDE
Administrative Law Judge

MEMORANDUM

In deciding actions in contested case proceedings, the rules of civil procedure for the district courts must be followed where the contested case rules are silent. Minn. Rules, pt. 1400.6600 (1991). Under Minn.R. Civ.P., 12.03, motions to dismiss must be treated as motions for summary judgment and disposed of as provided for in Rule 56 when matters outside the pleadings are presented to and not excluded by the court. In this c ase , both p ar t Ies submitted affidavits and other materials supporting their arguments, and it is appropriate, therefore, to treat the Respondent's Motion as one for summary judgment. Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, filed by a party, show that there is "no genuine issues as to any material fact and that either party is entitled to a judgment as a matter of law."

In order to obtain summary judgment, the moving party carries the burden of proof to establish that there is no genuine issue of material fact. See, e.g. Thiele v, Stich, 425 N.W.2d 580, 583, (Minn. 1988). When the movant also !ears the burden of persuasion on the merits at trial, its burden on summary judgment is to present "credible evidence" that would entitled it to a directed verdict, if not controverted at trial . Celotex Corp, v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 2557, 91 L.Ed.2d 265 (1986) (dissenting opinion laying out majority position); Theile v., Stich, supra, 425 N.W.2d at 583 n.l. However when the nonmoving party bears the burden of persuasion at trial, the moving party's burden can be met by informing the trial court of the bases for I ts motion and merely identifying those portions of the pleadings,

depositions, answers to Interrogatories, admissions or affidavits which it believes demonstrate the absence of the genuine issue of material f a c t . The moving party in such a case is not required to support I ts motion w I th affidavits or other similar material regating the opponent's claim. Celotex Corp., suprA, 106 S.Ct. at 2553. When the nonmoving party bears the burden of proof at trial , the moving party on a motion for summary disposition can meet its burden by merely pointing cot that there is no evidence to support the nonmoving party's case. Id. at 2554 In Celotex, the court also stated, in part:

> In our \dew, the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of a element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be "no genuine Issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders al I other f acts immateri al . The moving party is "entitled to a judgment as a matter of law" because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof. "[T]h[e] standard [for granting summary judgment] mirrors

the standard for a directed verdict. Under Federal Rule of Civil Procedure 50(a). Anderson v. Liberty lobby. Inc., 477 U.S. 242, 250, 106 S.Ct. 2505, 2511, 91 L.Ed.2d 202 (1986).

Accord: Carlisle v, City of Minngapolis, 437 N.W.2d 712 (Minn. Ct. App. 1989).

Summary judgment may be entered against the party who has the burden of proof at trial if it fails to make a "sufficient showing" of the existence of an essential element of its case after adequate time to complete discovery. Carlisle, supra, 4 3 7 N.W.2d at 715. To meet this burden of producing "sufficient" evidence, the nonmoving party with the burden of proof at trial must offer "significant probative evidence" tending to support its claims. This but-den is not met by showing that there is some "metaphysical doubt" as to the material facts. it. However, the nonmoving party has the benefit of the view of the evidence most favorable to him. ConCord Co-op v. Security state Bank of Claremont, 432 N.W.2d 195, 197 (Minn. Ct. App. 1988). Also, all doubts and inferences must be resolved against the moving party. Dollander v. Rochester State Hospital 3 6 2 N . W . 2d 3 8 6 , 3 8 9 (M i n n . C t . A p p . 1 9 8 5) .

On July 19, 1993, ?Or. Williams flled a Petition wth the Department alleging that he had been forced to resign (constructively discharged) from his employment with the Respondent on February 4, 1988 and that the Respondent never provided him with notice of his right to a hearing under Minn. Stat. 197.46. In h i s Petition, Mr. Williams asked the Commissioner to require respondent to reinstate him and put him in the same position he would have been in had he not been forced to resign.

In h i s Petition, Mr. Williams stated that he began working for the

Respondent on April 23, 1984 as machinist. He subsequently completed his probationary period and became a permanent employee. He worked until September 11, 1986 when he was given a medical leave of absence to recover from a low back injury sustained in an automobile accident. While recovering from his injury, Mr. Williams alleged that he became involved in legislative activities relating to the Respondent's alleged discriminatory treatment of minority employees. Mr. Williams stated that he recovered from his injuries in July 1987 and was given permission to return to work. He stated, however, that he was told not to return to work by the president of Local 459 of the American Machinist and Aerospace Workers (AMAW). Because of the union president's statements, and the statements of other employees advising him not to return to work because he could be injured and advising him that fellow employee s resented his marriage to a white woman, Hi I iams alleged that he involuntarily resigned his employment on February 1, 1988. In Ns view, he was constructively discharged from his job and was entitled to notice of his right to a hearing. Because he received no notice of a right to a hearing, he requested that he be reimbursed for all backpay from the date of his resignation, be reinstated to his previous employment status as a journeyman machinist with all seniority rights, accrued tenure and reimbursement for medical expenses he would not otherwise have been required to pay, be given a letter of apology and guaranteed in writing that no reprisal should ever be taken against him.

It its Motion to Dismiss, Respondent argues that in a Federal District Court case, it was decided that Petitioner was not removed from his employment

but -simply chose not to return to a workplace from which he had been absent

for nearly 1 1/2 years. Williams v. Metropolitan Waste Control Commission 781 F. Supp 1424, 1428 (D.Minn. 1 992) . In that case, Petitioner, brought a race discrimination suit against the Respondent and some of the Respondent's employees and supervisors in their individual capacities. The Petitioner's claims were brought under 42 U.S.C. 1981 and 1983, the Minnesota Human Rights Act and common law.

The complaint in the federal action alleged that Williams "was subjected to a pattern and practice of acts of r a c i a I discrimination and reprisal discrimination." Complaint, par. 7. At the time the initial complaint was served on November 5 1987, Wi1liams alleged that he was still unable to return to work from an automobile accident which occurred on September 11, 1986. In the initial complaint, Williams alleged that he was the victim of illegal race discrimination and reprisal discrimination under the Minnesota Human Rights Act and that certain defendants had aided and abeted the race and reprisal discrimination against him in violation of the Minnesota Human Rights Act! Complaint, Count I, VT 19-21. The complaint also alleged that the defendants had intentionally inflicted emotional distress upon him, asaulted him, and had been negligent. These common law torts were included in Count II of the complaint. Also, Williams alleged that he was the victim of illegal discrimination under 42 U.S.C. 1981 and 1983. Complaint, Count III. In a Revised 'Supplemental Complaint, Williams alleged that he was constructively discharged from his employment with the Respondent on February 1 1 988 and that Respondents had engaged in other illegal discrimination subsequent to the i ssuance of the in i t i al compl a int and through March 1 5 , 1 988.

In its jury instructions, the federal district court judge explained the jury's du t ie s in evaluating Williams charges under 1981 and 1983. The court stated:

> It is unlawful for an employer to intentionally discriminate against an employee because of that person's race. Plaintiff [Williams] claims that because of his race, defendants intentionally took several adverse employment actions against him. Your verdict will be for Plaintiff if you find:
>
> First, that plaintiff has proved that his race, more likely than not, was a motivating factor in defendant's actions; that is, that he was disciplined more severely than similarly situated white employees, or that he was subjected to a racially discriminatory, hostile work environment because of his race, or that he was constructively discharged because of his race.

See, Jury Instruction No. 17. The court also instructed the jury more specifically on the charge that he was constructively discharged from his employment, stating:

> Plaintiff claims that he was harassed and subjected to a hostile working environment because of his race. To establish a hostile environment claim, plaintiff must prove, by a preponderance of the evidence, that

defendants created ow condoned the continuing existence of a work environment that significantly ow adversely affected h I s psychological well-being because of h I s race. Plaintiff must show that he has endured a steady barrage of approbrious racial comment; a few isolated incidents of racially-oriented harassment or hostility or insufficient to establish a violation.

Jury instruction No. 19. The Court also stated:

To establish that defendants intentionally discriminated against the plaintiff because of his race by constructively discharging him, plaintiff must establish, by a preponderance of the evidence, the following facts:

First, that Plaintiff is a member of a protected group;
Second, that he was satisfactorily performing his job;
Third, that the defendant deliberately forced plaintiff to resign by making his working conditions Intolerable;
and
Fourth, that the employer sought others with similar qualifications to perform the job or the job remained open.

Jury instruction No. 20.

Following an 11-day trial, at jury retuned a verdict in favor- of the Respondent and the individual defendants on Petitioner's 1981 and 1983 race discrimination claims and his tort claims. The Court separately considered and rejected Petitioner's claims under the Minnesota Human Rights Act. In reaching its decision, the Court concluded that Petitioner failed to establish that he was constructively discharged from his employment in violation of the antidiscrimination provisions of the Minnesota Human Rights Act.

in Respondent's view, the Federal Court's prior finding in favor of the Respondent holding that Petitioner voluntarily resigned his position is binding on Petitioner in thi s proceeding and cannot be relitigated. In support of Its argument , Respondent cites Ellis v. Minneapolis Com'n on civil Rights, 319 N.W.2d 702 (Minn. 1982); Meyers through Meyers v. Price 4 6 3 N.W.3d 773, 776, 777 (Minn. App. 1990). Consequently, Respondent concludes that the prior finding that Petitioner voluntarily left his employment is dispositive of his veterans preference claim, and since Petitioner left his employment voluntarily, he had no right to notice of his right to a hearing or a hearing under Minn. Stat. 197.46 and that his Petition should, therefore, be dismissed. Meyers Through Meyers v. Price supra involved the doctrine of res judicata or claim preclusion. The Ellis, case involved the re 1 a te d doctrine of collateral estoppel or issue preclusion. Because both doctrines were relied upon, both will be discussed.

The doctrine of res judicata has two aspects. The first bars claims and involves merger or bar. The second bars issues (issue preclusion) and involves collateral estoppel. Meyers Through Meyers, supra, 463 N.W.2d at 7 7 6 Kremer v. Chemical Const. Corp. , 456 U.S. 461 , 466 (1 982 Allen v. McCurry, 449 U.S. 90, 94, 101 S.Ct. 411, 66 L. H. 2d 308 (1 980) . Claim preclusion Is "designed to prevent the relitigation of causes of action

a I ready de termined in a pr i or ac t i on , so a pa rty may not be tw ice vexed f or the same cause " Id Beutz v. A.O. Smith Harvestore Products Inc. 431 N.W.2d 528, 531 (Minn . 1 988) (quoting Shimp v. Sederstrom, 305 M inn . 2 67 , 2 70, 233 N.W.2d 292, 294 (1975)). Unde r the doc t r ine of c I a im prec I u s i on , a f ina I judgment on the merits becomes an absolute bar to a later suit for the same cause of action and is conclusive between the parties and their privies as to every matter litigated and every matter which might have been litigated. id.

For purposes of this Rule, t he i den t i f i c a t i on of c a u se s of a c t i on ha s been described as follows:

> A "cause of action" for the purpose of applying the doctrine of res judicata is the fact or f a c t s which establish or give rise to a right of action, the existence of which affords a party a right to judicial relief. The number of variety of the facts alleged do not constitute more than one cause of action as long as their result, whether they be considered severally or in combination, is the violation of but one r ig h t by a single legal wrong. In determining whether causes of action are identical so as to warrant application of the rule of res judicata, the test most commonly stated is to ascertain whether the same evidence which is necessary to sustain the second action would have been sufficient to authorize a recovery in the f i r s t ; if so the prior judgment is a bar; otherwise it is not . . . . It has been held that a proper test on an issue of identity of causes of action is to inquire whether the judgment sought will be inconsistent with the prior judgment; if such inconstistency is not shown , the pr i or judgment i s not a

bar. Other tests that have been applied are whether the substance of the rights or interests established in the f i r s t action wi I 1 be destroyed or impaired by the prosecution of the, second action, whether the claims or rights of action asserted by plaintiff in both actions vested or accrued at the same time, whether the grounds of the two actions are the same, whether the allegations of the pleadings are substantially the same, whether the facts essential to maintenance of the two actions are the same, and whether questions the essential to decision of the first controversy are the same as those in the second action.

50 C.J.S., Judgments, 648 at 88-89. See also,Melady-Briggs Cattle Corporation v. Drovers State Bank State Bank of South St. Paul 213 Minn. 304, 6 N.W..2d 4 54, 4 57 (1 942) (same ev idence te s t) Riverbluff Development Co. V. Insurance Co. of North America 412 N.W.2d 792 (Minn. App. 1987)(same evidence test).

In order for res judicata to apply, there must have been a final judgment on the merits, a second suit involving the same cause of action, and identical parties ow parties in privity. Meyers through Meyers, supra , 463 N.W.2d at 776. Respondent has shown that there was a final judgment on the merits in the federal district district court action between the parties and that the parties in the district court action and those here are identical. The only issue, therefore, is whether this proceeding involves the same cause of action

decided in the federal court case For the reasons discussed be low i t i s concluded that it does. Therefore , Petitioner' s request for rel i ef i s barred under the claim preclusion prong of the res judicata doctrine.

The federal court proceeding involved the same operative facts and issues raised by the Petitioner in thi s proceeding . In federal court, Petitioner alleged , among other things , that he was constructively discharged from his employment due to hi s race. In this proceeding he is asserting the same claim. Here , the evidence necessary to show that he was constructively discharged from his employment is the same evidence he was required to present in order to prevai 1 in federal court . Here, as in federal court, Petitioner must establish that he was the victim of discriminatory treatment creating a hostile working environment resulting in h i s constructive discharge. The issues in both proceedings are identical and it is concluded, therefore, that the doctrine of res judicata appl i es to bar the claims asserted by the Petitioner in this proceeding. Sussel v. Civil Service Commission, 851 P.2d 311, 317-319 (Hawaii 1993).

In federal court, the court as well as the jury rejected the Petitioner's claims that he was constructively discharged from his employment due to illegal race discrimination. Following an eleven-day trial, the jury, as well as the coat, rejected that claim. The federal Court found, in fact, that Petitioner was not constructively discharged but voluntarily terminated his employment. The federal courts decision, which was not appealed, bars the claims asserted by the Petitioner is thi s case . Respondent should riot be twice vexed for the same cause and it is the public interest to put an end to repetitive litigation. Consequently, Respondent's Motion to Dismiss the Petition on the grounds of res judicata should be granted and the Petitioner's Petition should be dismissed.

Assuming that it is more appropriate to resolve Respondent' s Motion on

the grounds of collateral estoppel or "issue preclusion", the Respondent's Motion must be granted. Col lateral estoppel has traditionally been applied when a question of fact or law resolved in a prior suit is raised in a subsequent proceeding based on a different cause of action. Under the doctrine, judgment in the prior s u i t precludes relitigation of issues necessary to the outcome of the first action. The doctrine of collateral estoppel minimize inconsistent determinations of factual issues among different forums and promotes judicial economy. In Ellis v. Minneapolis Commission on Civil Rights , 319 N.W.2d 702, 704 (Minn. 1982) 'he court stated that collateral estoppel is appropriately applied when:

(1) the issue wa s identical to one in a prior adjudication;
(2) there was a final judgment on the merits;
(3) the estopped party was a party or in privity with a party to the prior adjudication; and
(4) the estopped party was given a full and fair opportunity to be heard on the adjudicated issue.

All four factors articulated in Ellis are met here . There was a f ina l judgment cm the merits in the federal case brought by Petitioner against Respondent; both Petitioner and Respondent were parties to the federal case; and Petitioner was given a full and fair opportunity to be heard on the constructive discharge issue and other issues raised in that case. The crux

of Petitioner's claim against Respondent in the federal action was that he had been involun tar ily discharged due to his race in viol ation of the Minnesota Human Rights Act and various federal c ivi I rights laws In this case he also seeks to show t hat he was involun tar i ly (constructively) separe ated from his employment with Respondent due to his race. 'he Administrative Law Judge is persuaded that the Petitioner is estopped from asserting that Ids separation from employment was involuntary (a constructive discharge) due to Ms race. Hence, under collateral estoppel principles, the Respondent' s Motion should be granted and Petitioner's Petition should be dismissed. The federal court, not the Commissioner, has the expertise to resolve the issues raised by Petitioner.

In AFCME Council 96 v. Aerohead Regional Corrections Board 356 N.W.2d 295 (Minn. 1984), the Minnesota Supreme Court held that principles of res judicata and collateral estoppel would not apply to either arbitration or veterans preference hearings on the question of "Just cause" for termination of a veteran who is a public employee. ?Mile expressing some reservation about affording a veterans preference hearing and an arbitration hearing to determine whether good cause existed for an employee's discharge, it concluded that a veteran was entitled to both. A court's decision in that case does not dictate or suggest a different result with respect to Respondent's Motion, There are no overriding public policy reasons or statutory provisions suggesting that the rules of res judicata or collateral estoppel should not be app I ied here. Although veterans may be entitled to twco just cause hearings when they are discharged, veterans ;are not entitled to a hearing when they have voluntari ly terminated their employment. in thi s c a se , a federal district court. judge and a jury following a lengthy trial concluded that Petitioner voluntarily discontinued his employment and was not constructively discharged. The federal court's decision as well as that of the federal jury should be given res judicata or collateral estoppel effect in determining

whether Petitioner is entitled to a hearing under the Veterans Preference Act. Because Petitioner voluntarily quit his employment, he was not "removed" from his job. Hence, he was not entitled to notice of his right to a hearing or a hearing under Minn. Stat. 197.46 (1988).

In Graham V. Special School District No. 1 472 N.W.2d 114 (Minn. 1991), the Minnesota Supreme Court held that a teacher found guilty of misconduct by a school district following a teacher termination hearing was estoppped from asserting a defamation claim against the district in a tort action because the statements -alleged to be defamatory were found to be true in the teacher termination proceeding. In thi s case , as i ri Graham, Petitioner should be precluded from raising the very issues raised in front of the district court. The federal district ccurt and the jury heard his claims on a variety of grounds, its decision was a final adjudication subject tco further judicial review, the issues raised were within the jurisdiction and expertise of the court, Petitioner had the benefit of counsel, and Petitioner had all the procedural safeguards imaginable. Giving preclusive effect to the federal district court's decision is noA I ike those cases involving the preclusive effect of prior administrative decisions or arbitration proceedings. Agencies and arbitrators may not have the expertise or jurisdiction to decide many i s sues or their decision in a particular case might put the agency in the position of evaluating the lawfulness of its own conduct. See Graham v. Special School District No. 1 supra 472 N.W.2d at 119; Villarreal Independent School District No 659 N.W.2d -- (Minn. App. 1993) (filed August 24, 1993, C6-93-634). As noted in Graham, collateral estoppel is a "flexible doctrine" and in each case it must determined if its application

would work an injustice on the party against whom it is asserted. In thi s case, the Administrative Law Judge is persuaded that applying res judicata or collateral estoppel principles to the issue Petitioner seeks to raise works no injustice on the Petitioner but would, in fact, preserve j u d i c i a 1 and administrative resources, avoid potentially conflicting results, and further interests of comity.